IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5845 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHBHAI ISHWARBHAI PATEL - Petitioner(s)
Versus
H K KAPADIA & 1 - Respondent(s)

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Appearance :
MR MB GANDHI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/12/2006

ORAL JUDGMENT

1. In this petition, the petitioner-Chairman of a defunct society has challenged an order of recovery of Rs.87,610/- passed by the Liquidator

on 18th September, 1995.

2. The petitioner was chairman of Jai Bhagwati Consumer Cooperative Bhandar. The society had gone into liquidation. There were certain Government dues outstanding from the society. A show cause notice dated 21st August, 1995 therefore,came to be issued calling upon the petitioner to explain non payment of Rs.6,000/- towards Government's Share contribution, Rs.6,000/- towards furniture loan, Rs.1800/- towards interest, Rs.31,387/- as bank cash credit, Rs.10,000/- for customs deposit, Rs.10,000/- for shop deposit, etc.. Since the respondents were not satisfied with the explanation of the petitioner, impugned order came to be passed seeking recovery of an amount of Rs.87,610/-.

3. The order has been challenged on various grounds. Primarily it is contended that the petitioner who was the chairman cannot be in his personal capacity, made answerable to the dues of the society. It is contended that even otherwise the show cause notice was vague and could not have been acted upon.

4. On the other hand learned AGP supports the order passed by the liquidator.

5. Having heard the learned advocates appearing for

the parties, I find that the show cause notice was vague and did not give necessary particulars as to why and to what extent recovery is sought for. It may be noted that the petitioner was the chairman of the Cooperative Society and entire recovery is sought to be made from the petitioner personally. In absence of some evidence on record to suggest that he was responsible for embezzlement of the funds of the society, for the dues of the society without there being anything more on record, it was not possible to haul up the petitioner in his personal capacity. On this short ground alone, impugned order is quashed.

6. Rule is made absolute. No order as to costs. The petition stands disposed of.

(Akil Kureshi, J.)

(raghu)